

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Child Fatality Reporting and Disclosure

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held October 15, 2014 as follows:

Office Building # 8  
744 P Street, Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on October 15, 2014

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 8-4-192  
Sacramento, California 95814  
TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286  
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## CHAPTERS

### Manual Policies and Procedures (MPP), Chapter 31-500

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 39 (Chapter 468, Statutes of 2007) added Section 10850.4 to the Welfare and Institutions (W&I) Code, and specifically requires the custodian of records for a county child welfare agency to release specified child fatality information to the public. This statute is promulgated by MPP sections 31-502.3 through .35, which have been repealed, rewritten and expanded in order to meet the conditions of the California Superior Court decision in *Butterfield v. Lightbourne*.

The W&I Code section 10850.4(c) indicates specific documents required for disclosure when a child fatality was the result of abuse and/or neglect and differentiates which types of documents are released when the child resided with a parent/guardian rather than a foster care provider. This statute was promulgated in MPP sections 31-502.33 and .34 and the court decision found that these regulations erroneously required that abuse and/or neglect be inflicted by a parent/guardian or a foster care provider in order to prompt disclosure. However, the court decision found that conditioning the release of information upon the identity of the perpetrator is arbitrary and leads to inconsistencies in reporting. Accordingly, existing language has been replaced and expanded to address a more broad range of frequent and/or complicated scenarios encountered by county child welfare services (CWS) agencies, including abuse and/or neglect inflicted by a parent, guardian, foster care provider, other known individual, non-residential child care, by an unidentified individual or by a combination thereof.

The decision also found that the regulations in MPP section 31-502 erroneously use the terms “resulted in” rather than “led to” in describing the causality of abuse and/or neglect that “resulted in” the death of a child. Because W&I Code section 10850.4(b) prompts disclosure for cases where abuse and/or neglect “led to” a child’s death, the court decision found the Department’s use of the terms “resulted in” problematically required that a child’s death be the direct result of abuse and/or neglect in order to prompt disclosure of case file information. This excludes cases in which abuse and/or neglect contributed to the child’s death but were not the direct cause. Accordingly, the new regulations provide a more expansive clarification of the circumstances that prompt a determination that abuse and/or neglect resulted in a child’s death. Specifically, such a determination was expanded to cases where abuse and/or neglect were a material contributing factor to the child’s death.

Additionally, the court decision called for clarification of regulations regarding disclosure of licensing records for non-residential licensed child care providers. Such records are typically included within juvenile case file records maintained by CWA agencies in most counties. The W&I Code section 10850.4(o) explicitly states that the custodian of records, i.e. CWA agencies, shall not be required to obtain records not contained in the case file in order to meet the statutory disclosure requirements. Because of contention regarding the release of such records, clarification has been added as verified by the plaintiffs in the court decision.

### Anticipated Benefits of Proposed Action

See benefits description under "STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT" on page four.

### Evaluation of Inconsistency or Incompatibility With Existing State Regulations

After conducting an evaluation for any related regulations on this area, CDSS has determined that these are the only regulations dealing with Child Fatality Reporting and Disclosure. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

### **COST ESTIMATE**

1. Costs or Savings to State Agencies: The local assistance fiscal impact is absorbable (\$122 state share) for FY 2014-15 and ongoing.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: The local assistance fiscal impact is absorbable (\$122 county share) for FY 2014-15 and ongoing).
3. Nondiscretionary Costs or Savings to Local Agencies: The local assistance fiscal impact is absorbable (\$122 county share) for FY 2014-15 and ongoing.
4. Federal Funding to State Agencies: The local assistance fiscal impact is absorbable (\$120 federal share) for FY 2014-15.

### **LOCAL MANDATE STATEMENT**

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

### **STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## SMALL BUSINESS IMPACT STATEMENT

The CDSS must determine that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

## STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action indicate which specific documents are required for the disclosure of a child fatality when it results from abuse and/or neglect, and differentiates which types of documents are released when the child resided with a parent/guardian rather than a foster care provider. The proposed regulations will benefit the public by offering more complete and accurate child fatality reporting information and, thereby, create better government transparency.

## STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

## STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## AUTHORITY AND REFERENCE CITATIONS

Sections 10553 and 10554 of the W&I Code grants CDSS the authority to develop the regulations and Section 10850.4 of the W&I Code is being referenced to make the regulations more specific.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED  
REGULATION

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